

## DEVELOPMENT CODE

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#### **Section 151.30.001** **Creation of Hearing Officer**

- A. Creation. The Hearing Officer of the City of Sierra Vista is hereby established.
- B. Appointment. The Hearing Officer shall be appointed by resolution of the City Council.
- C. Removal for Cause. The Hearing Officer may, after a public hearing, be removed from office by the Mayor and City Council for inefficiency, neglect of duty, or malfeasance in office. The Mayor and City Council shall file a written statement for the public record of the reasons.

#### **Section 151.30.002** **Meetings, Rules and Record**

- A. Meetings. Meetings shall be held at such time as the Hearing Officer has an appeal or variance request to hear.

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- B. Rules of Procedure. The Hearing Officer shall be governed by such rules and policies as are necessary to carry out his/her duties and responsibilities.
- C. Records. Minutes shall be kept of the Hearing Officer proceedings, including a record of the examinations and other official actions, all of which shall be of public record and filed in the Office of the City Clerk.

### **Section 151.30.003**

#### **Powers and Duties of the Hearing Officer**

The Hearing Officer shall:

- A. Hear and decide appeals where it is alleged that there is error in any order, requirement or decision made by the Director of Community Development in the enforcement of the Code.
- B. Hear and decide appeals for variances from the terms of this Code only if, because of special circumstances applicable to the property including its size, shape, topography, location, or surroundings, the strict application of the Code will deprive such property of privileges enjoyed by other property of the same classification in the same district. Any variance granted is subject to such conditions as will assure that the adjustment authorized shall not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and in which such property is located.
- C. Reverse or affirm, wholly or partly, or modify the order, requirement or decision of the Director of Community Development appealed from, and make such order, requirement, decision, or determination as necessary.

### **Section 151.30.004**

#### **Limitations of the Powers of the Hearing Officer**

The Hearing Officer may not make any changes in the uses permitted in any district, nor make any changes in the terms of this Code provided the restriction in this paragraph shall not affect the authority to grant variances pursuant to this article.

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### **Section 151.30.005**

#### **Variances**

Upon appeal in specific cases, the Hearing Officer shall authorize such variances from the terms of this Code as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this Code would result in unnecessary hardship. A variance shall not be granted by the Hearing Officer unless and until:

- A. A written application for variance is submitted demonstrating:
  - 1. That special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures or buildings in the same district; and,
  - 2. That literal interpretation of the provisions of this Code would deprive the applicant of rights commonly enjoyed under the terms of this Code by other properties in the same district; and,
  - 3. That the alleged hardships caused by literal interpretation of the provisions of this Code do not result from the actions of the applicant; and,
  - 4. That granting the variance requested will not confer upon the applicant any special privilege that is denied by this Code to other lands, structures or buildings in the same district; and,
  - 5. That granting the variance requested will not interfere or injure the rights of other properties in the same district.
- B. A public hearing has been held.
- C. The Hearing Officer finds that the reasons set forth in the application justify the granting of the variance and that the variance is the minimum variance that will make possible the reasonable use of land, building or structure.
- D. The Hearing Officer finds that granting of the variance will be in harmony with the general purpose and intent of this Code and the General Plan and will not be injurious to the neighborhood, or otherwise detrimental to the public welfare.

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### **Section 151.30.006**

#### **Notice of Public Hearing**

- A. Every application for interpretation or variance shall be considered by the Hearing Officer at a public hearing, notice of which shall be given in the following manner:
1. Notice of the time, date and place of the hearing including a general explanation of the matter to be considered, and including a general description of the area affected, shall be given at least 15 days before each hearing. Each notice of public hearing shall be published at least once in a newspaper of general circulation, published or circulated in the City of Sierra Vista and posted at City Hall, the Public Library, the Community Center, and at other locations in the City that the City Clerk may deem necessary or advisable.
  2. Notice of the time, date, and place of the hearing on the variance shall be posted on the affected property.
  3. Notice of the time, date, and place of the hearing for interpretation or variance shall be mailed by certified mail at least 15 days in advance to the owner and applicant or his agent.
  4. Notice of the time, date, and place of hearings on variances shall be sent to all owners of property within 500 feet of the affected property. The failure of a property owner to receive notice shall not invalidate an action if a good faith attempt was made to comply with the requirements of this Code for notice. In addition to persons who receive notice as required by the matter under consideration, the City may provide notice to others if it has reason to believe that they are affected or otherwise represent an interest that may be affected by the proposed interpretation or variance.
- B. The application shall contain:
1. A vicinity ownership map drawn to scale showing all parcels in the vicinity adjacent to and surrounding the property under appeal within a radius 500 feet of the exterior boundaries of the property.
  2. A typed or printed list containing the names and mailing addresses of the owners of parcels within a radius of 500 feet of the boundaries as indicated in Item 1 above and identified by the same number as on the vicinity ownership map. Correct zip codes must be shown for each address.

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### **Section 151.30.007**

#### **Public Hearing of Application by Hearing Officer**

Every application shall be considered by the Hearing Officer at a public hearing.

- A. Burden of Proof. The burden of proof is upon the proponent. The more drastic the change or the greater the impact of the proposal, the greater is the burden upon the proponent. The proposal must be supported by proof that it conforms to the applicable provisions of this Code, especially the specific criteria set forth for the particular type of decision under consideration.
- B. Order of Proceedings.
1. The Hearing Officer will state the case and call the public hearing to order. The Hearing Officer may establish the time allowed for the presentation of information.
  2. Any objections or jurisdictional grounds shall be noted in the record.
  3. Any abstentions or disqualifications shall be determined.
  4. Presentation of staff report. City staff may also present additional information whenever allowed by the Hearing Officer during the proceedings.
  5. The Hearing Officer may view the area in dispute for purposes of evaluating the proposal, but shall state the place, time, manner, and circumstances of such viewing in the record.
  6. Presentation of information by the applicant or those representing the applicant.
  7. Presentation of evidence or inquiries by those persons who support the proposal.
  8. Presentation of evidence or inquiries by those persons who oppose the proposal.
  9. Presentation of evidence or inquiries by those persons who do not necessarily support or oppose the proposal.
  10. Rebuttal testimony may be presented by persons who have testified supporting or opposing the proposed change. The scope of material presented during rebuttal shall be limited to matters that were brought up during the course of the hearing. Rebuttal shall be first presented by the applicant or his/her representative and then by those opposed to the proposed change. The Hearing Officer shall limit rebuttal to avoid repetition or redundancy.

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11. At the close of presentation of information, rebuttal, and written argument, the Hearing Officer shall declare that the hearing is closed unless there is a motion to continue the public hearing. Additional written argument may be permitted at the discretion of the Hearing Officer.
12. Once a hearing has been closed, it shall be reopened only by the Hearing Officer and only after a reasonable showing that:
  - a. There is evidence which was not reasonably available at the time of the hearing; and,
  - b. The evidence is now available to the person seeking to reopen the hearing; and,
  - c. The evidence is factual, substantial, and material. If the hearing is closed, no further evidence shall be received except in response to specific questions directed to staff or one of the parties to clarify earlier evidence. The opportunity for brief rebuttal shall also be afforded to adverse parties.

### C. Rules of Procedure.

1. Formal rules of evidence shall not apply.
2. Written exhibits, visual aids, affidavits, maps, and the like may be submitted as part of the evidence. Any signed writing presented to, or received by the Hearing Officer or by any other City agency or official outside the public hearing, may be received as argument and placed in the record, but will not be considered as part of the information, except that signed writing received at the Department of Community Development prior to the closing of the public hearing shall be included as part of the information in that hearing. Unless the Hearing Officer specifically allows later filing of argument, no writings received after the close of the hearing will be considered as argument.
3. All information received by the hearing authority shall be retained and preserved and shall be transmitted to an appellate body in the event an appeal is filed in accordance with *Section 151.30.008*. True copies of original information may be substituted for original documents.
4. All evidence and argument shall be as brief as possible, consistent with full presentation.
5. Redundancy shall be avoided.

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6. Each person presenting information or argument shall be permitted to complete his presentation without interruption, except by the Hearing Officer, to enforce this Code.
  7. Discussion of personalities shall be avoided to the extent possible in making a complete presentation.
  8. No person present shall engage in applause, cheers, or other vocal or outward expressions of approval, or disapproval, agreement or disagreement. If any person persists in such conduct after warning by the Hearing Officer, such person may be expelled from the hearing.
  9. The Hearing Officer has complete authority to enforce these provisions to assure that a fair hearing is held, including the authority to expel from the public hearing and to bar from further appearance at the public hearing any person who willfully violates any one or more of these provisions.
- D. Considerations. Following the hearing, the Hearing Officer shall consider and make a finding, taking into account:
1. The testimony at the hearing;
  2. A site inspection of the property in question;
  3. The recommendations from interested official bodies.
- E. Findings. After public hearing, the Hearing Officer shall render its decision in the form of a finding of fact which shall include:
1. A preamble summarizing basic facts regarding the property and action taken prior to the public hearing by the hearing authority. This preamble should include, but should not be limited to, statements regarding:
    - a. Size and location of property in question including tax lot number(s) and map number(s).
    - b. Purpose of application.
    - c. Statement of applicant(s) legal interest in the property.
    - d. Date of original application.

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- e. Whether or not applicant represents self or another person.
  - f. Date of all public hearings (if any other) and actions taken at those hearings.
  - g. Other relevant background facts, as appropriate.
- 2. A statement of the applicable criteria against which the proposal was tested, and of the Hearing Officer's interpretation of what would be required to achieve compliance with the criteria and standards.
  - 3. A statement of the facts that the Hearing Officer found establishing compliance or noncompliance with each applicable criteria and assurance of compliance with applicable standards.
  - 4. Specific findings of fact, individually numbered.
  - 5. Ultimate findings of fact and conclusions, individually numbered. Such findings must relate relevant facts to the criteria identified previously. The findings may require an explanation of possible conflict between provisions of the identified legal criteria and an explanation of how any such conflicts were resolved.
  - 6. The reasons for a conclusion, and the decision to deny or approve the proposed change, with or without conditions.
- F. Staff Assistance. The Hearing Officer may request staff assistance to prepare proposed findings of fact.

### **Section 151.30.008**

#### **Appeals, Hearing and Stay of Proceedings**

- A. Appeals. Appeals to the Hearing Officer concerning interpretation or administration of this Code may be taken by any person affected by any decision of the Director of Community Development. Such appeals shall be filed within 30 days with the Hearing Officer through the Department of Community Development and shall specify the grounds thereof. The Director of Community Development shall transmit to the Hearing Officer all papers constituting the record upon which the action appealed was taken. Any person dissatisfied with the decision of the Hearing Officer may appeal to the Hearing Officer of Adjustment.



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- B. Hearings. The Hearing Officer shall fix a reasonable time for the hearing of an appeal, give public notice thereof as well as due notice to the parties in interest, and reach its decision within a reasonable time. At the hearing, any party may appear in person or by agent or attorney. Parties to an appeal shall have the right to present their case by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination of witnesses as may be required for full, true disclosure of the facts; provided that:
1. The submission of documentary evidence shall not, by reason of its written form, prejudice the interest of any party;
  2. The Hearing Officer shall, as a matter of policy, provide for exclusion of irrelevant, immaterial or unduly repetitious evidence and, in furtherance of this policy, may limit cross-examination.
- C. Stay of Proceedings. Any appeal stays all proceedings in furtherance of the action appealed from, unless the Director of Community Development certified to the Hearing Officer after the notice of appeal is filed with him that, by reason of facts stated in this certificate, a stay would, in his opinion, cause imminent peril to life and property. In such case, proceedings shall not be stayed other than by a restraining order, which may be granted by the Hearing Officer or by a court of record in application on notice to the Director of Community Development and on due cause shown.

### **Section 151.30.009**

#### **Creation, Membership, Terms of Office of Board of Adjustment**

- A. Creation. The Board of Adjustment of the City of Sierra Vista is hereby established.
- B. Membership. The City Council shall act as the Board of Adjustment.
- C. Terms of Office. The term of office for each member of the Board shall run concurrent with their term on the City Council.

### **Section 151.30.010**

#### **Officers, Meetings, Rules and Record**

- A. Officers. The Mayor shall act as Chairperson and the Mayor Protem shall act as Vice Chairperson. The Chairperson, or in his absence, the Vice Chairperson, may administer oaths and compel the attendance of witnesses.

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- B. Rules of Procedure. The Board may, by resolution, adopt and be governed by such rules and policies as are necessary to carry out its duties and responsibilities.
- C. Meetings. Meetings shall be held at the call of the Chairperson. A quorum shall consist of four members for the transaction of any business. The concurring vote of not less than three members shall be necessary for all business including reversal of an order or decision of an administrative official or to decide an issue in favor of an applicant.
- D. Records. The Board shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact and shall keep records of its examinations and other official actions, all of which shall be of public record and filed in the Office of the City Clerk.

### **Section 151.30.011**

#### **Powers and Duties of the Board**

Hear and decide appeals where it is alleged that there is an error in any order, requirements, or decision made by the Hearing Officer.

### **Section 151.30.012**

#### **Limitations of the Powers of the Board**

The Board may not make any changes in the uses permitted in any district, nor make any changes in the terms of this Code provided the restriction in this paragraph shall not affect the authority to grant variances pursuant to this article.

### **Section 151.30.013**

#### **Notice of Public Hearing**

- A. Every application for an appeal of a Hearing Officer decision shall be considered by the Board at a public hearing, notice of which shall be given in the following manner:
  - 1. Notice of the time, date, and place of the hearing including a general explanation of the matter to be considered, and including a general description of the area affected, shall be given at least 15 days before each hearing. Each notice of public hearing shall be published at least once in a newspaper of general circulation, published or circulated in the City of Sierra Vista

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and posted at City Hall, Public Library, Community Center and at other locations in the City that the City Clerk may deem necessary or advisable.

2. Notice of the time, date, and place of the hearing on the variance shall be posted on the affected property.
3. Notice of the time, date, and place of the hearing for interpretation or variance shall be mailed by certified mail at least 15 days in advance to the owner and applicant or his agent.
4. Notice of the time, date, and place of hearings on variances shall be sent to all owners of property within 500 feet of the affected property. The failure of a property owner to receive notice shall not invalidate an action if a good faith attempt was made to comply with the requirements of this Code for notice. In addition to persons who receive notice as required by the matter under consideration, the City may provide notice to others if it has reason to believe that they are affected or otherwise represent an interest that may be affected by the proposed interpretation or variance.

B. The application shall contain:

1. A vicinity ownership map drawn to scale showing all parcels in the vicinity adjacent to and surrounding the property under appeal within a radius 500 feet of the exterior boundaries of the property.
2. A typed or printed list containing the names and mailing addresses of the owners of parcels within a radius of 500 feet of the boundaries as indicated in Item 1 above and identified by the same number as on the vicinity ownership map. Correct zip codes must be shown for each address.

### **Section 151.30.014**

#### **Public Hearing of Application by Board**

Every applicant shall be considered by the Board at a public hearing.

- A. Burden of Proof. The burden of proof is upon the proponent. The more drastic the change or the greater the impact of the proposal, the greater is the burden upon the proponent. The proposal must be supported by proof that it conforms to the applicable provisions of this Code, especially the specific criteria set forth for the particular type of decision under consideration.

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### B. Order of Proceedings.

1. The Chairperson will state the case and call the public hearing to order. The Chairperson may establish the time allowed for the presentation of information.
2. Any objections or jurisdictional grounds shall be noted in the record.
3. Any abstentions or disqualifications shall be determined. Members shall announce all conflicts of interest.
4. Presentation of staff report. City staff may also present additional information whenever allowed by the Chairperson during the proceedings.
5. The Board may view the area in dispute for purposes of evaluating the proposal, but shall state the place, time, manner, and circumstances of such viewing in the record.
6. Presentation of information by the applicant or those representing the applicant.
7. Presentation of evidence or inquiries by those persons who support the proposal.
8. Presentation of evidence or inquiries by those persons who oppose the proposal.
9. Presentation of evidence or inquiries by those persons who do not necessarily support or oppose the proposal.
10. Rebuttal testimony may be presented by persons who have testified supporting or opposing the proposed change. The scope of material presented during rebuttal shall be limited to matters which were brought up during the course of the hearing. Rebuttal shall be first presented by the applicant or his/her representative and then by those opposed to the proposed change. The Chairperson shall limit rebuttal to avoid repetition or redundancy.
11. At the close of presentation of information, rebuttal, and written argument, the Chairperson shall declare that the hearing is closed unless there is a motion to continue the public hearing. Additional written argument may be permitted at the discretion of the Board.
12. Once a hearing has been closed, it shall be reopened only upon a majority vote of the Board and only after a reasonable showing that:
  - a. There is evidence which was not reasonably available at the time of the hearing; and,

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- b. The evidence is now available to the person seeking to reopen the hearing; and,
- c. The evidence is factual, substantial, and material. If the hearing is closed, no further evidence shall be received except in response to specific questions directed to staff or one of the parties to clarify earlier evidence. The opportunity for brief rebuttal shall also be afforded to adverse parties.

### C. Rules of Procedure.

1. Formal rules of evidence shall not apply.
2. Written exhibits, visual aids, affidavits, maps, and the like may be submitted as part of the evidence. Any signed writing presented to, or received by any member of the Board or by any other City agency or official outside the public hearing, may be received as argument and placed in the record, but will not be considered as part of the information, except that signed writing received at the office of Community Development Department prior to the closing of the public hearing shall be included as part of the information in that hearing. Unless the Board specifically allows later filing of argument, no writings received after the close of the hearing will be considered as argument.
3. All Information received by the hearing authority shall be retained and preserved and shall be transmitted to an appellate body in the event an appeal is filed in accordance with *Section 151.30.008*. True copies of original information may be substituted for original documents.
4. All evidence and argument shall be as brief as possible, consistent with full presentation.
5. Redundancy shall be avoided.
6. Each person presenting information or argument shall be permitted to complete his presentation without interruption, except by the Chairperson, to enforce this Code.
7. Discussion of personalities shall be avoided to the extent possible in making a complete presentation.
8. No person present shall engage in applause, cheers, or other vocal or outward expressions of approval, or disapproval, agreement or disagreement. If any person persists in such conduct after warning by the Chairperson, such person may be expelled from the hearing.

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9. The Chairperson has complete authority to enforce these provisions to assure that a fair hearing is held, including the authority to expel from the public hearing and to bar from further appearance at the public hearing any person who willfully violates any one or more these provisions.
- D. Considerations. Following the hearing, the Board shall consider and make a finding, taking into account:
1. The testimony at the hearing;
  2. A site inspection of the property in question;
  3. The recommendations from interested official bodies.
- E. Findings. After public hearing, the Board shall render its decision in the form of a finding of fact which shall include:
1. A preamble summarizing basic facts regarding the property and action taken prior to the public hearing by the hearing authority. This preamble should include, but should not be limited to, statements regarding:
    - a. Size and location of property in question including tax lot number(s) and map number(s).
    - b. Purpose of application.
    - c. Statement of applicant(s) legal interest in the property.
    - d. Date of original application.
    - e. Whether or not applicant represents self or another person.
    - f. Date of all public hearings (if any other) and actions taken at those hearings.
    - g. Other relevant background facts, as appropriate.
  2. A statement of the applicant criteria against which the proposal was tested, and of the Board's interpretation of what would be required to achieve compliance with the criteria and standards.

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3. A statement of the facts that the Board found establishing compliance or noncompliance with each applicable criteria and assurance of compliance with applicable standards.
  4. Specific findings of fact, individually numbered.
  5. Ultimate findings of facts and conclusions, individually numbered. Such findings must relate relevant facts to the criteria identified previously. The findings may require an explanation of possible conflict between provisions of the identified legal criteria and an explanation of how any such conflicts were resolved.
  6. The reasons for a conclusion, and the decision to deny or approve the proposed change, with or without conditions.
- F. Staff Assistance. The Board may request staff assistance to prepare proposed findings of fact.

### **Section 151.30.015**

#### **Appeals from the Board**

Any person aggrieved by a decision of the Board may, at any time within thirty (30) days after the Board has rendered its decision, file a complaint for special action in the superior court to review the Board decision. Filing the complaint does not stay proceedings on the decision sought to be reviewed, but the court may, on application, grant a stay and, on final hearing, may affirm or reverse or modify, in whole or in part, the decision reviewed.

### **Section 151.30.016**

#### **Fees**

Upon filing an application or appeal, the applicant shall pay a filing fee established by the City Council by separate resolution. In addition, the applicant must pay all required publishing costs associated with the appeal.